The appellants are alleged to have committed the offence on the 30th March, 1971. There was nothing in the prosecution case to establish the charge against the appellants apart from the presumption. That presumption was not applicable in the present case. The prosecution could however, if it had so desired, prove its case by other reliable evidence but that was not done. The onus to establish the guilt of the accused lay heavily on the prosecution and unless that onus was discharged there was no reason to call upon the accused to enter the defence. For these reasons the appeal is allowed and the order of the learned magistrate set aside.

*Appeal allowed.*

Solicitors: *Ng Chee Kong.*

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## PUBLIC PROSECUTOR v. TANGGAAH (No. 2)

**[R.Cr.J. (Sharma J.) March 27, 1972]**

**[Ipoh — Criminal Revision No. 12 of 1972]**

*Criminal Law and Procedure — Revision — Bail — Forfeiture of — Recording of grounds of proof — Issue of notice to bailor — Criminal Procedure Code (F.M.S. Cap. 6) ss. 404(1) 443, Second Schedule, Form Nos. III, XLII.*

In this case, in the court below, one Ramadu had stood surety to the bond executed by the accused. The accused failed to appear before the learned magistrate on November 8, 1971, as a result of which a warrant of arrest was issued against him.

On November 13, 1971, the learned magistrate issued a notice to the bailor Ramadu, requiring him to produce the accused at the court of the magistrate, Bruas, on December 10, 1971. The bailor appeared before the learned magistrate who made an order that the bailor was to pay $50.00 to the Government of Malaysia for a breach of the bail as there were two consecutive occasions of the bail being jumped.

**Held:** (1) the court acts without jurisdiction if it forfeits the bond without recording the grounds of proof that a bond had been forfeited. In this case the bond was for the appearance of the accused before the court, and the records being before the court, the bail bond and the fact that there was a failure to appear, was enough to enable the court to forfeit the bond and there was no need for any further record of grounds of proof. However, a notice had to be sent to the bailor as envisaged in section 404(1) and as exemplified in Form No. XLII in the Second Schedule to the Criminal Procedure Code. In this case as this required notice was not issued, the order of the learned magistrate could not stand and the order requiring the bailor to pay the sum of $50.00 was to be set aside and the said sum refunded to him;

(2) there is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or produce the accused in court on each day of the hearing.

REVISION.

*Haidar bin Mohamed Noor* (Deputy Public Prosecutor) for the Public Prosecutor.

Bailor in person.

**Sharma J.** (delivering oral judgment): I had called for the records of Bruas magistrate's court arrest case No. 88 of 1970 (*Public Prosecutor* v. *Tanggaah @ Thangiah*). While going through the records I discovered that one Ramadu s/o Appanah had stood surety to the bond executed by the accused in the said criminal case. The accused failed to appear before the learned magistrate on the 8th November, 1971 and the learned magistrate issued a warrant of arrest against him. On the 13th November, 1971 the learned magistrate issued a notice to the bailor Ramadu requiring him to produce the accused at the court of the magistrate, Bruas, on the 10th December, 1971. The bailor appeared before the learned magistrate and the record made by the learned magistrate on that day reads as follows: —

"Accused present in Court.

Prosecuting Officer: Ibrahim.

Accused absent: 25.10.71 — Medical Certificate.
8.11.71.

Bailor: not necessary to come to court not aware of the proceedings.

*Order of the court:*

The bailor to pay $50.00 to the Government of Malaysia for a breach of the bail as there are 2 consecutive occasions of the bail being jumped.

Accused to get another bailor in the sum of $300.00."

Section 443 of the Criminal Procedure Code relates to the forms which may be used for the various purposes for which they have been prescribed under the Code. The section allows their use with such variations as the circumstances may require. Form No. XLII deals with a notice to be sent to the surety on breach of a bond. It specifically requires the bailor to pay the penalty or show cause within a specified number of days why payment of the sum should not be enforced against him. This form is to be found in the second schedule to the Criminal Procedure Code and is as much a part of the Code as any other portion of it. These forms are naturally not supposed to be exhaustive and do not override any express provision of the Code. They are, however, useful in throwing light on such sections of the Code in connection with which their use has been prescribed. The bail bond prescribed under the Code is to be found in Form III and the relevant portion so far as it relates to the surety to a bail bond reads:

"I do hereby declare myself surety for the above-named of , that he shall attend before the Magistrate's Court at on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the court; and, in case of his making default therein, I hereby bind myself to forfeit to the Yang di-Pertuan Agong the sum of dollars."

There is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or to produce the accused in court on each day of the hearing. Section 404 of the Criminal Procedure Code deals with the procedure on forfeiture of a bond and that provision being of a penal nature has to be strictly construed. The court acts without jurisdiction if it forfeits the bond without recording the grounds of proof that a bond had been forfeited. In this case, however, the bond was for the appearance of the accused before the court and the records being before the court, that is the order for bail, the bail bond and the fact that there was a failure to appear was enough to enable the court to forfeit the bond

and there need not be any further record of grounds of proof. A notice, however, had to be sent to the bailor as envisaged in section 404(1) and as exemplified in Form No. XLII in the second schedule to the Criminal Procedure Code.

I had asked the learned magistrate to give his grounds of decision for making the order that he did make. He has been very frank in admitting his mistake but has taken refuge under the shelter that the notice sent by him to the bailor was the only type of notice supplied to the court by the Government Printer meaning thereby that the court had not been supplied the forms in Form No. XLII. The blame cannot be shifted to the Government Printer. The duty is cast on the court and the non-supply of printed forms cannot be made an excuse for the non performance of a duty. It is hardly any reason for making the order which the law does not authorise until a proper notice had been served on the bailor as required by section 404. The required notice not having been issued the order of the learned magistrate cannot stand and I set aside the order which the learned magistrate had made requiring the bailor to pay the sum of fifty dollars. I understand that fifty dollars have been paid by the bailor to the court and that amount should be refunded to him.

*Order set aside.*

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## SHARIKAT K. M. BHD. v. THE DIRECTOR-GENERAL OF INLAND REVENUE

**[O.C.J. (Gill F.J.) April 10, 1972]**

**[Muar — Originating Motion No. 8 of 1971]**

*Income Tax — Company general meeting expenses — Whether expenditure deductible from income — Premium in respect of tenancy — Whether income assessable to tax — Income Tax Act, 1967, ss. 4(d), 33, Sch. 5 para. 34.*

This was an appeal by way of a case stated by the Special Commissioners of Income Tax, for the opinion of the court on the requisition of the appellant company.

The facts appear sufficiently from the judgment.

The questions of law for the opinion of the court were: (a) whether the general meeting expenses of $760 were an expenditure deductible from income so as to reduce the amount assessable to income tax; and (b) whether the sum of $2,500 received by the appellant company from its tenant in respect of the tenancy of one of the company's shop houses was income assessable to tax.

The Special Commissioners held, with regard to the first question, that the general meeting expenses of $760 were not deductible on the ground that they were not expenses wholly and exclusively incurred in the production of the gross income within the meaning of section 33 of the Income Tax Act, 1967. As regards the second question, it was held that the sum of $2,500 was a premium.

**Held,** dismissing the appeal: on a proper interpretation of section 33 of the Income Tax Act, 1967, question (a) must be answered in the negative, and on the true construction of section 4(d) of the Act, the answer to question (b) must be in the affirmative.

*Cases referred to:-*

(1) *Strong & Co. of Romsey, Ltd.* v. *Woodifield* 5 T.C. 215, 220.

(2) *Bombay Steam Navigation Co. (Pte.) Ltd.* v. *Commissioner of Income Tax* A.I.R. 1965 S.C. 1201, 1205.

(3) *Commissioner of Income Tax* v. *Kirkand Coal Co.* A.I.R. 1970 S.C. 1586.

(4) *Robert Addie & Sons' Collieries Ltd.* v. *Commissioners of Inland Revenue* 8 T.C. 671, 676.

(5) *Commissioner of Income Tax* v. *Rao Thakur Narayan Singh* 46 I.T.R. 901.

(6) *Regent Oil Co. Ltd.* v. *Strick* [1965] 3 All E.R. 174, 197.

INCOME TAX CASE STATED.

*R. R. Chelvarajah* (*Yew Hock Thye* with him) for the appellants.

*Rahmat bin Haji Jamari* (Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Gill F.J.:** This is an appeal under paragraph 34 of Schedule 5 of the Income Tax Act, 1967 by way of a case stated by the Special Commissioners of Income Tax for the opinion of this court on the requisition of the appellant company.

The facts as found by the Special Commissioners are fully stated in the case. They lie in a narrow compass. The sole business of the appellant company consists of letting out its five shop houses. By a letter dated February 9, 1969 one Mat Isa bin Wahab offered to rent one of its shop premises at No. 2 Jalan Aji Segamat. Similar offers were also received from other persons. The offers were discussed at a meeting of the company's board of directors on March 9, 1969. Eventually, the appellant company entered into a verbal agreement with Mat Isa whereby the premises were let out to him for a period of ten years from July 1, 1969 at a rental of $100 per month and a further payment of a lump sum of $2,500 which was duly paid before Mat Isa moved into the premises. This amount of $2,500 was returnable to Mat Isa only if the company took back the premises before the expiry of the said period of ten years.

Paragraph 3 of the case states that in connection with its annual general meeting in 1969, the company incurred the following expenses: —

| | |
|---|---|
| (a) postage for sending out notices of general meeting | $100.00 |
| (b) printing of notices of general meeting, minutes of previous meeting, directors' report and statement of account | $360.00 |
| (c) cost of nasi briani for shareholders attending the general meeting | $300.00 |
| | $760.00 |

The respondent treated the amount of $2,500 received by the company from Mat Isa in respect of the tenancy as premium and included this amount as its income when assessing the company's income tax for the year 1970, and he refused to allow the general meeting expenses of $760 to be deducted from the income. The company appealed to the Special Commissioners against the inclusion of the said amount of $2,500 and against the refusal to allow deduction of the said amount of $760.

The special commissioners heard the appeal in due course and on February 4, 1971 made a deciding order that the appeal be rejected but that the assess-